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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 659 of 2003
in
MISC.CIVIL APPLICATION No 1067 of 2003
with
CIVIL APPLICATION No 4720 of 2003
in
SPECIAL CIVIL APPLICATION No 7531 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J D CHHATBAR

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 659 of 2003

MS SANGEETA PAHWA for M/S THAKKAR ASSOC. for Appellant

MR UR BHATT AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Heard learned counsel for the parties, Ms.Sangeeta Pahwa for the appellant-petitioner and Mr.Uday Bhatt, AGP for the respondents.

Special Civil Application No.7531/90 filed by the appellant-original petitioner was dismissed on merits by the learned Single Judge of this court (Coram : K.A.Puj, J.) in absence of the learned counsel for the petitioner on 4.4.2003, therefore, Misc. Civil Application No.1067/03 filed in Special Civil Application No.7531/90, which was also dismissed by learned Single Judge of this court (Coram : K.A.Puj, J.) on 20.6.2003. It is clear from the order at Annexure dated 20.6.2003 passed by the learned Single Judge that the main writ petition i.e. Special Civil Application No.7531/90 filed by the appellant-petitioner was decided on merits in absence of the learned counsel for the petitioner. In absence of the learned counsel petitioner, learned Single Judge at the most could have dismissed the petition for default. In that view of the matter when the Misc. Civil Application was filed for recalling the order dated 4.4.2003 dismissing the main writ petition on merits it should have been allowed and the learned Single Judge ought to have recalled the order and decided the writ petition on merits after hearing the learned counsel for the petitioner. Unfortunately, learned Single Judge has dismissed that Misc. Civil Application also by his order dated 20.6.2003.

In view of the above, both the orders passed by the learned Single Judge dismissing the Special Civil Application No.7531/90 on merits dated 4.4.2003 and order dated 20.6.2003 dismissing the Misc. Civil Application No.1067/03 are hereby quashed and set aside and the main writ petition i.e. Special Civil Application No.7531/90 is remanded to learned Single Judge for deciding the same on merits in accordance with law after hearing learned counsel for the appellant-petitioner. Accordingly, this appeal is allowed.

As main Letters Patent appeal is allowed, Civil Application for stay does not survive anymore and

accordingly it is disposed of.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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